

THE AFTERMATH OF THE PERMANENT COURT'S JUDGMENT
IN THE FREE ZONES CASE

In its judgment of June 7, 1932,¹ the Permanent Court of International Justice decided that the régime of the free zones in Gex and Upper Savoy should "continue in force so long as it has not been modified by agreement" between France and Switzerland; that France might continue to collect at the political frontier only "fiscal duties not possessing the character of customs duties," and that the customs line should be withdrawn by January 1, 1934; and that "some provision for the importation of goods free of duty or at reduced rates across the line of the Federal customs, in favor of the products of the Zones, should be contemplated," a Swiss declaration on this question being "placed on record." The terms of the Swiss declaration referred to were as follows: ²

1. By the note of May 5, 1919 (Annex I to Article 435 of the Treaty of Versailles), Switzerland undertook—on the understanding that the free zones of Upper Savoy and the District of Gex were maintained—"to regulate in a manner more appropriate to the economic conditions of the present day the terms of the exchange of goods between the regions in question."

2. Should the judgment of the court, in conformity with the principles laid down by the order of December 6, 1930, compel France to establish her customs barrier on the line fixed by the provisions of the treaties of 1815 and other supplementary instruments concerning the free zones of Upper Savoy and the District of Gex, Switzerland, without making any reservation for subsequent ratification, accepts the following:

(a) The Franco-Swiss negotiations designed to secure the execution of the undertaking stated in No. 1 above shall take place, should France so request within twelve months from the date of the court's judgment, with the assistance and subject to the mediation of three experts.

(b) Failing an agreement between the parties and upon the request of either party, the said experts shall be appointed from amongst the nationals of countries other than France and Switzerland, by the judge at present acting as President of the Permanent Court of International Justice for the purposes of the case of the free zones, or, should he be unable to do so, by the President of the Permanent Court of International Justice, provided these persons consent to undertake this duty.

(c) It shall rest with the experts to fix—with binding effect for the parties—in so far as may be necessary by reason of the absence of agreement between them, the terms of the settlement to be enacted in virtue of the undertaking given by Switzerland (No. 1 above). The principles of law laid down by the judgment of the court shall be binding on the experts, save in so far as the parties may by mutual consent authorize them to depart therefrom.

This declaration was made by the Swiss agent (M. Logoz) on April 22, 1932, in the course of oral arguments before the court, and on behalf of his government the Swiss agent asked the court to take note of the declaration in its

¹ Series A/B, No. 46.

² *Id.*, pp. 169–170. The original was in French.

judgment.³ In his oral reply on April 26, 1932, the French agent (Professor Basdevant) treated the declaration as an offer to arbitrate (*offre de compromis*), and as such he doubted its binding character, in view of the constitutional limitation on the treaty-making power in Switzerland.⁴ A decree of the Swiss Federal Assembly of March 26, 1925,⁵ had invested the Federal Council with the powers necessary for settling questions which might arise under the *compromis* between France and Switzerland;⁶ but the French agent urged that the question involved in the Swiss declaration did not fall within these powers, that it was not a question of executing the *compromis* but a question of a new *compromis* to arbitrate before another tribunal. In the motives stated by the court, it was said:⁷ "It is true that, in the course of the recent hearings, the French agent declared the Swiss proposal to be unacceptable; but it is also true that he regarded it as an offer to conclude a special agreement, an offer which, in this form, he had no power to entertain. It is also true that the French agent expressed certain doubts as to the binding character, from a constitutional point of view, of the Swiss declaration; having regard to the circumstances in which this declaration was made, the court must however regard it as binding on Switzerland." These "circumstances" were not explained, and it is possible to argue that the Swiss Federal Council had been given ample powers to make a binding declaration. M. Dreyfus, French judge *ad hoc*, dissenting, thought it "open to question whether the declaration is binding on Switzerland."⁸

The question as to the binding character of an oral declaration before the court is in some ways akin to the question as to the binding character of the "Ihlen declaration" in the Eastern Greenland Case.⁹ The Swiss Federal Constitution of 1874 as amended requires (Art. 85) approval of a treaty by both chambers of the Swiss Federal Assembly, and provides (Art. 89): "International treaties concluded for an indefinite time or for more than fifteen years are subject to adoption or rejection by the people, if a request to that effect is made by 30,000 citizens or by eight Cantons."¹⁰ The declaration of April 22, 1932, was not a treaty, but it was an engagement not limited to fifteen years' duration, and the court's statement that it was of binding character may be taken to be in line with Judge Anzilotti's statement in the Eastern Greenland Case with reference to the "Ihlen declaration" that limitations placed by Nor-

³ Series C, No. 58, p. 448.

⁴ *Id.*, pp. 563-565.

⁵ *Recueil des Lois Fédérales*, 1928, p. 37.

⁶ *Id.*, p. 39. The reference here is to the French-Swiss *compromis* of Oct. 30, 1924. For the text, see Series A/B, No. 46, p. 97.

⁷ Series A/B, No. 46, p. 170.

⁸ *Id.*, p. 209.

⁹ Series A/B, No. 53, p. 71.

¹⁰ "Les traités internationaux conclus pour une durée indéterminée ou pour plus de quinze ans sont soumis également à l'adoption ou au rejet du peuple, si la demande en est faite par 30,000 citoyens ou par huit cantons." 2 Dareste, *Les Constitutions Modernes* (4th ed.), p. 571. The first application of this provision after its adoption in 1921 was the popular vote on Feb. 18, 1923, by which the French-Swiss convention of Aug. 7, 1921, was rejected by 414,305 votes to 93,892. Series C, No. 17-I, p. 843.

wegian constitutional law on the powers of the Minister for Foreign Affairs did not concern the Danish Government.¹¹

In the course of 1932, the French Government announced its willingness to abide by the judgment of the court, and on May 27, 1933, it accepted the procedure proposed in the Swiss declaration before the court. The two governments designated as experts M. Osten Undén (Sweden), Mr. John Baldwin (Great Britain), and Señor J. Lopes Oliván (Spain). These experts were invested with a twofold function, (1) to mediate, and (2) if necessary to arbitrate. Formal negotiations between the parties were held with the assistance of the experts at Montreux-Territet on October 9–12 and November 6–25, 1933. In the course of the negotiations, the French Government expressed the intention to maintain a fiscal cordon at the political frontier, and agreement was reached between the two delegations as to the control of the passage of persons and merchandise across this cordon. The parties agreed also on the delimitation of the zones, and on measures of control with reference to the zones. As the negotiations did not lead to complete agreement, however, notably on the admission into Switzerland of products of the zones following the withdrawal of the French customs line, on November 25, 1933, the experts were called upon to complete the terms of the settlement to the end that Switzerland might "regulate in a manner more appropriate to the economic conditions of the present day the terms of the exchange of goods between the regions in question." Their *sentence-arbitrale*, given on December 1, 1933,¹² set up a *Règlement concernant les importations en Suisse des produits des zones franches* which was said to have "obligatory effect" for the parties.

Assuming the rôle of arbitrators, the experts felt themselves called upon to establish a new *règlement* for the importation of products of the zones into Switzerland which would be more liberal and more stable than in the past. They took as a point of departure a *projet* submitted by the Swiss agent to the court in 1930,¹³ which had envisaged not only free entry of zones' products into Switzerland, but also the entry of Swiss products into the zones free from customs duties and taxes. The French Government took the position that a tax on importations was not a customs duty or tax, the Swiss view being *contra*; on this point the expert-arbitrators felt themselves incompetent, but they refused to admit an interdependence of the fiscal régime of the zones and the customs facilities accorded by Switzerland. The Swiss agent's proposal to the court placed certain restrictions on the importations from the zones into Switzerland, which the French delegation did not accept; however, certain proposals as to these restrictions were made by the experts and accepted by the parties. The experts thought that the new régime should be more liberal than the proposal by Switzerland which would have called for a general quota system (*système du contingentement*).

¹¹ Series A/B, No. 53, p. 92.

¹² *French Journal Officiel*, Dec. 15, 1933, pp. 12441, 12479.

¹³ Series C, No. 19-I, Vol. 3, p. 1246.

The "permanent" *règlement* was to enter into force on January 1, 1934. The essential points of this *règlement* are: (1) the unlimited free entry (*franchise illimitée*) for the entire production of agriculture and its branches (*branches annexes*), as well as for mineral products (*bruts*); (2) free entry for manufactured products within the limits of *crédits d'importation*; (3) allowance of temporary restrictions on the system of unlimited free entry, in exceptional circumstances; (4) establishment of an agency of conciliation and control; (5) establishment of an arbitral procedure. Under the fourth point, a permanent French-Swiss Commission is provided for, of which three members should be chosen by each government, to smooth out difficulties and to exercise other powers. Under the fifth point, an elaborate procedure is envisaged for disputes as to the interpretation or application of the *règlement*, which may call for arbitration by a single arbitrator, or by an *ad hoc* tribunal of five members acting *ex aequo et bono*.

On December 15, 1933, a French decree was promulgated, fixing the boundaries of the zones.¹⁴ On December 27, 1933,¹⁵ a law was promulgated in France for the establishment of the customs and fiscal régime in the French territories. On December 31, 1933, the French members of the permanent commission provided for in the *règlement* were designated. On the Swiss side, prior to January 1, 1934, the Federal Council promulgated a decree putting the *règlement* into effect.¹⁶

After some twelve years of contest, an important international dispute is thus, for the time being at any rate, brought to an end. Neither side is much satisfied, in consequence. The French Government has found itself compelled to reverse action taken in 1923. The people of Geneva, which is the part of Switzerland immediately affected, seem to have taken little satisfaction in the outcome since the first flush of pride in their victory has faded. Now that it is finished, the whole affair seems to have been hardly worth the effort. Yet it has furnished fresh indication of the value of permanent agencies in international relations, even if their rôle is confined to building bridges from one public attitude to another. The existence of the Permanent Court of International Justice served in this case to prevent estrangement of the relations between two peoples. Perhaps one can say, also, that the later events have vindicated the judgment of the court.

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THE RECOGNITION OF THE GOVERNMENT OF EL SALVADOR

On January 26, 1934, the United States instructed the American representative in Salvador to extend recognition to the government of that country. On the same day the Department of State made an announcement of this action as follows:

¹⁴ French *Journal Officiel*, Dec. 16, 1933, p. 12481.

¹⁵ *Id.*, Dec. 29, 1933, p. 13016.

¹⁶ *Recueil des Lois Fédérales*, 1933, p. 1027.